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ABSTRACT

In this paper several court decisions relating to student rights and privileges are considered, particularly in the light of student unrest that is now extending to junior colleges. An individual's rights are guaranteed and protected by the federal Constitution which states that: no person shall be deprived of life, liberty or property without due process of law. With regard to academic matters, the courts generally maintain a policy of non-interference, leaving such decisions to the colleges themselves. In disciplinary matters, however, the courts have often been called upon to decide whether or not a student has been deprived of his rights under the due process clause. Brief examples from court cases concerning student discipline are given. Junior colleges, the author feels, should incorporate due process procedures into the rules and regulations of the college. These should be prepared by the administration and approved by the faculty and trustees, then published in the catalog and student handbook so that every student has an opportunity to be aware of them. Some junior college administrators may feel that this approach would limit and restrict their authority although the main purpose would be to limit capricious and arbitrary power of administrators while protecting the rights and privileges of students. (BB)

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"DUE PROCESS" FOR JUNIOR COLLEGE
STUDENTS IN ACADEMIC AND DISCIPLINE
CASES

THE FLORIDA COMMUNITY JUNIOR
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"DUE PROCESS" FOR JUNIOR COLLEGE STUDENTS IN ACADEMIC AND DISCIPLINE CASES

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CLEARINGHOUSE FOR JUNIOR COLLEGE INFORMATION

INTRODUCTION

The following paper on "due process" for junior college students was prepared by Dr. John Andes, Assistant Professor of Educational Administration at the University of Florida. Dr. Andes has placed special emphasis in his work on compliance systems in higher education. We have indeed been fortunate in Florida's community colleges with respect to student's unrest. As yet no major upheaval has taken place in our junior colleges.

Dr. Andes' recommendations for a system of due process for junior college students may assist our colleges in keeping free from such violence.

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"DUE PROCESS" FOR JUNIOR COLLEGE STUDENTS IN ACADEMIC AND DISCIPLINE CASES

By John Andes

The power and status of institutions of junior colleges is being challenged as never before in the history of our country. The rights and privileges of administrators are being questioned by students, faculty members, and by members of the public in general. Actions and attitudes of students and faculty members are raising serious questions about the relevancy of many of the existing policies for student discipline.

The sudden crises that have hit many junior college campuses are but one of the many symptoms that demonstrate an underlying need. Many junior colleges have no effective or relevant process for handling student academic and disciplinary cases. Many other junior colleges have procedures that are inadequate, not only to meet the needs of militant groups, but are equally inadequate in conforming with the decisions of state and federal courts. The fact that junior colleges do not have such policies implies that students do not have the rights that are protected by the U.S. Constitution.

Article V of the Bill of Rights of the U.S. Constitution states that no person shall be deprived of life, liberty or property without due process of law. The Fourteenth Amendment states that ... "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property without due process of law...." These two statements guarantee to every citizen the right of due process and prohibit a state from abridging

it in any manner. The fact that a student is on a junior college campus does not lessen his rights and privileges as a citizen of the United States.

With the guarantee of due process in the Federal Constitution and most State Constitutions, and with little or no definition of due process, the courts have been called upon frequently to decide if the constitutional rights of the student have been violated. It is the intent of this paper to examine the court decisions relating to student rights and privileges and the relating issue of due process, and to examine selected due process procedures.

The concluding section of the paper will present a series of steps which should meet the due process requirements of the court decision and will go into the process of developing standards of conduct and their dissemination of these standards. The focus will be primarily on public junior colleges, and no attempt will be made to discuss private or parochial junior colleges as the courts have consistently used a different standard for them. (1:612)

Academic Affairs

The courts have consistently refrained from interfering in cases involving scholastic achievement or requirements, preferring to leave "the subject where it belongs, with those qualified to master it." (2:380) In Connelly v. University of Vermont and State Agricultural College, the court said, "The rule of judicial non-interference is particularly applicable for medical schools, as courts are not qualified." (3:160) A New York court ruled: "A court should refrain from interjecting its view within the delicate areas of school administration which relate to eligibility of applicant for admission to college and determination of marking standards." (4:679)

The courts have refrained from interfering with institutional decisions relating to academic dishonesty, though some courts have felt they should take a broader responsibility (5:652). In this case they ordered the university to re-examine the basis of this action and to define "deficiency."

In Foley v. Benedict (1932) the court ruled the faculty was legally experienced to adopt courses of study and to prescribe standards. In cases of limited capacity for student enrollment the courts have ruled it is "fair and reasonable" for students unable to keep up to be dismissed. (6:810)

Expulsion for turning in examinations done by someone else or stealing and selling examinations has been upheld by courts in several cases. Student Government is becoming more active in this area. They provide a due process by which students often receive a quasi-judicial court hearing, often with an appeal available to a faculty committee.

In the case of Blank v. Board of Higher Education of the City of New York (1966), the courts ruled against Brooklyn College and said, "If the college had an unvariable policy of withholding credits for lack of attendance, this should have been known.... The authority of the Dean of the Faculty to determine the acceptability of a program was not questioned, but his authority was not absolute either. It must rest on reasonable and plausible bases." (7:797)

The same judicial efforts to refrain from interference is found in court cases regarding the withholding of degrees for cause, unless there is proof of arbitrary or capricious action. Dr. MacDonald summarizes the cases in this area to say:

> "They (the courts) have ruled that catalog statements outlining the requirements leading to a degree form a contractual agreement, which is binding upon the student: that 'satisfactory examinations' means 'satisfactory to the faculty': that the passing of examinations given

> by a national board of examiners is a valid condition of graduation and not an unlawful delegation of the board's powers: that appeal to the college board of trustees is of no avail where 'recommendation by the faculty' is a requirement; and that encouragement by the head of a department to pursue a particular course of study leading to a degree does not imply that the degree will be awarded.
>
> In each of the three cases where the judiciary interfered, there was clear arbitrariness, caprice, or unreasonableness." (8:354)

Due process was seldom mentioned in cases involving academic affairs.

Disciplinary Affairs

Dr. MacDonald sees "due process" as the common thread in disciplinary cases (8:197). Cases in this area, though for many different offenses, all involved the claim by the student that he had been deprived of his right of due process. There is wide range of court views summarized by Elliott and Chambers: (1) those requiring previous notice and formal hearing; (2) those requiring only notice and informal hearing; and (3) those requiring no previous notice or hearing. (9:30) There was a trend toward informality in disciplinary hearings but it seems to be halted. (10:33)

In the basic case in this field, Commonwealth ex. rel. Hill v. McCauley (1887) the court ruled that dismissal could occur only after hearing with the following characteristics: (1) notice of the charge, fully, plainly and substantially described; (2) student entitled to know the testimony against him, who delivered it and the proofs; (3) opportunity of student to examine witnesses and call witnesses (11:82). This case preceeded the concern for student "due process" of our current courts. Most cases in the late 1880's and early 1900's did not require a hearing, though there were other significant cases which did. One of these cases stated that while it was not necessary to go through the formality of a trial, the university officials should act as a jury. (11:159)

The courts have refused to intervene when the student has not availed himself of the appeal through the proper administrative channels. They have upheld dismissal for many offenses:

> "Colleges and universities have been upheld in dismissals for a wide variety of charges, ranging from the very general, such as incompatibility with the standards of the college or 'not being a typical Syracuse girl,' to the more specific, as disruptive and obstreperous behavior in the dormitory, lying before a faculty committee, refusal to sign a pledge of good conduct, insulting correspondence to administrative officers, and overt inciting of dissatisfaction among the student body." (8:239)

Discipline for student's activities and statements off the campus is a highly controversial area, especially in light of the declining recognition of the right of a junior college or university to act in loco parentis. In 1917 the courts upheld the right of a university to expel a student for denouncing the policies of the government on the grounds of "misconduct" and "morallyunfit" even though his statements were made off campus (14:204-5). Tanton v. McKenny (1924) saw the court upholding the right of a university to dismiss a student because of indecorous behavior on the public streets of the town. In this case the courts said "due process" had been afforded the student, and the courts said the matter should be left to the university. (15:511)

There is disagreement as to whether the contractural rights of students with the institution overrides their right to due process. Most recent decisions decide in favor of due process. In Woody v. Burns et al. (1966) the court cited Due v. Florida A. & M. (1963) and Dixon v. Alabama (1961), giving four criteria for due process:

1. Notice containing a statement of specific charges and grounds which if proved would justify expulsion under duly established regulations.

2. A hearing which gives the disciplinary body time to hear both sides in detail and allows the student to produce his defense by witness or written affidavits of witnesses.

3. Action to be taken only by an authorized duly established disciplinary body organized and operated by well defined procedures.

4. The results and findings of the hearing to be presented in a report open to the student's inspection. (13:59)

Dixon v. Alabama (1961) is a basic case in "due process." The students were expelled for "being ringleaders in downtown civil rights demonstrations." No formal charges were placed, though the individuals were notified, nor was any hearing held. The U. S. Court of Appeals ruled that the voluntary contractural relationship did not relieve the necessity of "due process." They saw higher education as a "necessity of life" and "right to remain in a public institution of higher learning" as one which comes within the protection of the courts. (16:157) The court continued:

> "... we state our views on the nature of the notice and hearing required by due process prior to expulsion from a state college or university. They should, we think, comply with the following standards. The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion.... The nature of the hearing should vary depending upon the circumstances of the particular case. The case before us requires something more than informal interview with an administrative authority of the college...a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses. In such circumstances a hearing which gives the Board or Administrative authorities of the college an opportunity to hear both sides in considerable detail, is best suited to protect the rights of all involved. This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required. Such a hearing, with the attending publicity and disturbance of the college activities, might be detrimental to the college's educational atmosphere and impractical to carry out...." (17:158-9)

Knight v. State Board of Education (1961) quoted Dixon v. Alabama (1961) and followed with a notation that the procedure in it should be considered. In Due v. Florida Agricultural and Mechanical University (1963), the court ruled that the "due process" as defined in Dixon v. Alabama (1961) had been

followed and denied the injunction. These cases seem to establish a definite trend, especially in the area of discipline.

American Jurisprudence sums up this area:

> "...while the nature of the hearing required by due process prior to the expulsion of a student from a state college or university will vary depending upon the particular circumstances, where students are expelled for alleged misconduct, something more than an informal interview with an administrative official is required, since a charge of misconduct, as opposed to scholastic failure, depends upon a collection of facts easily colored by the point of view of witnesses, and under such circumstances, although a formal judicial hearing is unnecessary, not only should the governing authorities be given an opportunity to hear both sides in considerable detail, but also the student should be given the names of the witnesses against him, a report on the facts to which each witness testified, and the opportunity to present to the governing board, or at least to an administrative official, his own defense against the charge, and to produce oral testimony or written affidavits of witnesses in his behalf." (1:613)

Alternative Due Process Procedures

In light of the trend toward requiring "due process" in disciplinary cases, it is imperative that a public junior college should incorporate such procedure within its rules and regulations. The administration, who is responsible, should prepare such a procedure with the faculty and students before it is needed. It would be advisable to have legal assistance and to have the procedure approved by the faculty and the trustees of the institution. It should be published in the catalog and student handbook so that every student would have an opportunity to be aware of its provisions.

In developing a "due process" procedure Sol Jacobson suggested the following six steps:

1. Service of written charges and a clear and concise statement of the supporting evidence.
2. Reasonable opportunity to answer the charges in writing.
3. A trial before an impartial judge or tribunal.
4. The right of examining and cross-examining witnesses against him, and of producing witnesses and other evidence in his own behalf.

5. Representation by counsel or other friend in court.

6. Right of appeal to an authority higher than the trial court.

(18:202-204)

The American Association of University Professors, in a joint statement on rights and freedoms of students, listed eight suggested hearing procedures:

1. The hearing committee should include faculty members or students, or, if regularly included or requested by the accused, both faculty and student members. No member of the hearing committee who is otherwise interested in the particular case should sit in judgment during the proceeding.

2. The student should be informed, in writing, of the reasons for the proposed disciplinary action with sufficient particularity, and in sufficient time, to insure opportunity to prepare for the hearing.

3. The student appearing before the hearing committee should have the right to be assisted in his defense by an adviser of his choice.

4. The burden of proof should rest upon the officials bringing the charge.

5. The student should be given an opportunity to hear and question adverse witnesses. In no case should the committee consider statements against him unless he has been advised of their content and of the names of those who made them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

6. All matters upon which the decision may be based must be introduced into evidence at the proceeding before the hearing committee. The decision should be based solely upon such matters. Improperly acquired evidence should not be admitted.

7. In the absence of a transcript, there should be both a digest and a verbatim record, such as a tape recording, of the hearing.

8. The decision of the hearing committee should be final, subject only to the student's right of appeal to the president or ultimately to the governing board of the institution. (19:368)

Recommended Due Process Procedures

By examining the court decisions, the AAUP recommendations, and the recommendations by Sol Jacobson, certain crucial points stand out which should be incorporated into a procedure to insure "due process" for students in public junior colleges:

1. Notice delivered to the student containing a statement of specific charges and grounds, which if proved, would justify expulsion under duly established regulations.

2. A reasonable opportunity to answer the charges in writing.

3. A hearing which gives the impartial disciplinary body time to hear both sides in detail and allows the student to produce his defense by witness or written affidavits of witnesses.

4. The right to examine and cross examine witnesses against him.

5. Representation by "counsel" or other friend in court.

6. Action to be taken only by authorized duly established disciplinary body organized and operated by well defined procedures.

7. A transcript or verbatim record, such as a tape recording, of the hearing.

8. Results and findings of the hearing to be presented in a report open to the student's inspection.

9. The right of appeal to an authority higher than the disciplinary body.

These steps would appear to meet the requirements of any current court and, if followed, would probably prevent a court from reviewing the decision unless the charge or decision was arbitrary or capricious.

Developing Standards of Disciplinary and Academic Conduct

In academic cases, the administration and faculty should prepare and publish standards of academic performance expected by the institution, and the procedure to be followed when a student falls below the standards. A student should be aware of these standards and the appeal procedures available to him. These standards should be published in the catalog and in the student handbook. During the orientation session for incoming students, these standards should be discussed so that students have an opportunity not only to see the words, but to understand an interpretation of them.

In preparing the standards of conduct which would underly the discipline procedures, students, faculty members, administrators, and board members should all be involved. This would mean that the administration would share their responsibility for developing these standards with the students and the faculty. These standards should be limited to those which are essential to the educational program and to its community life. They should be defined as clearly as possible and should be free from standards which do not relate to the student's educational life.

Once a student has been formally notified of a charge against him, the status of the student should not be altered, nor should he be suspended from classes or from the campus, except for reasons which can be shown to be detrimental either to his person or to the person of other students, faculty, or to school property.

That this procedure of "due process" seems to limit and restrict the junior college administration, may cause concern on the part of some junior college administrators. The function of "due process" is to limit capricious and arbitrary power of an administrator. "Due process" also functions to protect the rights and privileges of a student; hopefully these procedures will be interpreted in this light.

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